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ABSTRACT

Sex discrimination in American education remains a persistent problem that requires concerted attention from many different perspectives. This Issuegram focuses on the legal mandates requiring sex equity in public schools. A brief background indicates a history of sex discrimination in education dating back to 1783. Several important weapons for ending sex discrimination are discussed, including federal constitutional requirements, state equal rights amendments, Title IX, and equal employment opportunity laws including Title VII of the 1964 Civil Rights Act. Some results of litigation under these laws are briefly discussed, and implications for state and federal policymakers are highlighted. (JAC)

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SEX EQUITY IN PUBLIC EDUCATION

Issuegram 35

Patricia Lines
Christiane Citron
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35. Sex Equity in Public Education

The Issue

Sex discrimination in American education remains a persistent problem that requires concerted attention from many different perspectives. This Issuegram focuses on the legal mandates requiring sex equity in public schools.

The Background

Throughout history, an individual's sex has profoundly affected his or her educational and career opportunities. In December 1783, Lucinda Foote at age 12, a young scholar of Greek and Latin, was denied admission to Yale University, although "fully qualified, except in regard to sex . . . ." In 1837, Oberlin College admitted four women and became the first "regular" postsecondary institution to try coeducation. These women served the men at meals, mended their clothing, and did the college laundry; they were required to remain silent in class. In 1982, Joe Hogan was denied admission to the nursing school of the Mississippi University for Women; he was the wrong sex.

Studies in the seventies of elementary school texts indicated that texts focused more often on boys than girls (by a ratio of 5 to 2). Males in the texts studied were often clever, persistent, heroic, creative, and adventurous, while females were often dependent, passive, incompetent, or fearful. In 65 out of 67 stories where one sex demeaned the other, females were demeaned by males. Males appeared in 134 different career roles; females in 31. Many career roles reflected sex stereotyping.

Recently, educators have sought to end sex discrimination in education. Their most important weapons include constitutional and other legal mandates.

Federal Constitutional Requirements

The fourteenth amendment to the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." On finding an intentional policy to burden a class (or group of persons), the United States Supreme Court has required "compelling" or "overriding" justification for that policy. The level of justification required almost always determines the outcome of cases. The courts usually strike down burdens on suspect classes, and uphold burdens placed on others. Traditionally, only classifications by race and national origin were considered "suspect;" other classifications had only to be rationally based.

However, the United States Supreme Court has applied an intermediate level of justification for sex discrimination claims since 1971 without acknowledging a break with precedent that required only a rational basis for such claims. Finally, in 1982, it expressly required "exceedingly persuasive justification" of important governmental objectives before it would uphold sex-based classifications. Applying this standard, the Court struck down a policy of excluding males from the school of nursing in Hogan v. Mississippi University for Women. The narrow ruling gives few clues as to how sex segregation in admission policies at other institutions would be treated. In fact, in 1975 an equally divided Court had upheld the continuation of a sex-segregated public high school. Meanwhile, litigants and courts are likely to rely on more specific statutes, leaving the parameters of federal constitutional protection unsettled.

State ERAs

Many states have constitutional prohibitions against sex discrimination. These state "equal rights amendments" (ERAs) follow no particular pattern, but generally courts interpret them to require the strictest standards for justification of sex-based classifications. By adopting an ERA, a state goes beyond federal law to apply the greatest protection against sex discrimination. Thus the supreme courts of Washington and Pennsylvania (with long-standing ERAs) have ordered access to boys' athletic teams for qualified girls. In Louisiana, however, the wording of the constitutional provision expressly dictates the lowest standard of justification. The Louisiana provision is now clearly supercedec by the higher federal standard enunciated in the Hogan case.

Nineteen states have adopted an ERA: Alaska, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Montana, New Hampshire, New Mexico, Pennsylvania, Texas, Utah, Vermont, Virginia, Washington, and Wyoming. The ERAs in California, Louisiana and Virginia are significantly limited.

Title IX

Title IX was designed to end sex discrimination in federally funded education programs. It provides that "No person in the United States shall, on the basis of sex, be excluded from participation or be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . . ."

- "Person" includes students and employees, and presumably includes citizens and aliens alike.
- "On the basis of sex" means no sex discrimination against females or males.
- "Excluded from participation in, denied the benefits of, or subjected to discrimination" includes omissions as well as deliberate discrimination, and requires affirmative action to overcome historical discrimination.
- "Any education program or activity" includes any federally funded education program, not just schools. Title IX is "program specific," so enforcement is limited to the particular federally funded "program" tainted by discrimination. Lower courts disagree about whether a "program" may be the entire institution or a separately

administered unit, such as a graduate or professional school. The Supreme Court will review this issue.

- "Federal financial assistance" includes direct (programmatic) federal moneys. However, much federal assistance, such as tuition for veterans, is indirect and impossible to trace to a particular program or activity. Lower courts disagree about whether institutions receiving such indirect assistance are subject to Title IX, and the issue is on the Supreme Court's docket.

- Either an injured person or a federal supervisory agency may enforce the statute. The federal agency may withhold federal assistance, after a hearing, if there is sex discrimination in a federally funded program.

- Title IX specifically exempts certain sex-based practices in education, such as admission policies of private undergraduate institutions, and public and private primary and secondary schools. However, Title IX forbids exclusion of students from a public college or university on the basis of sex.

Procedural and jurisdictional arguments have snarled the enforcement of Title IX. Its ultimate effect on sex discrimination is therefore difficult to assess.

Many states also have laws that specifically prohibit sex discrimination in education. Additional states, such as Ohio and New York, are currently considering similar legislation.

Equal Employment Opportunity Laws

Title VII of the Civil Rights Act of 1964 broadly prohibits discrimination based on sex (or race, color, religion, or national origin) in compensation, terms, conditions or privileges of employment. It attempts to eliminate discriminatory barriers to the employment and promotion of women, and specifically bars discrimination based on pregnancy or childbirth.

- This comprehensive federal statute applies to employers of 15 or more employees. Most public and private educational institutions are subject to this law. The law somewhat overlaps with Title IX, which also protects employees.

- Title VII specifically excludes certain employment practices from coverage. Sex-based policies based on bona

fide occupational qualifications are legal, although the Supreme Court clearly considers this exception very narrow. Likewise, use of professionally developed ability tests that have a disparate impact on the sexes are not unlawful, provided they are job-related and not used as a pretext for discrimination.

Litigation under Title VII has led to recognition of two distinct types of claims.

- First, "disparate treatment" because of sex, was "the most obvious evil" that Congress addressed in Title VII. This type of claim under Title VII requires proof of discriminatory intent, sometimes through inference. Unlike the Constitution, which allows classifications if adequate justification exists, Title VII prohibits deliberate sex-based policies regardless of their merit. Thus, Title VII prohibits an employer from using sex-based annuity tables, even though women live longer than men. Such policies "tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individuals," the Court has observed. "[E]ven a true generalization about the class is an insufficient reason for disqualifying an individual to whom the generalization does not apply." For this reason, schools ordinarily may not refuse to hire pregnant or married women, or mothers.

- Second, Title VII also prohibits apparently neutral practices where statistical evidence shows a "disparate impact" on one sex, unless the employer can prove that the requirement was necessary for the job. If the employer fails to produce such proof, such practices are illegal, regardless of the lack of direct proof of discriminatory intent. For example, requiring passage of a written examination is legal only if the test is shown to measure job-related criteria.

Employees are also guaranteed equal wages for equal work under the federal Equal Pay Act. In addition, most states and some cities have enacted civil rights laws providing similar protection. In fact, Title VII recognizes the important role of state laws, and requires an individual to first seek redress from the appropriate state or local agency before seeking relief under Title VII.

Policy Implications

Eliminating sex discrimination in education is not easy. States should lead by helping public education institutions understand legal requirements, thus avoiding the high cost of ignoring them. Generally, a policy's disparate impact on male or female students or faculty raises questions about the policy's legality, but is not determinative. Under the Constitutional and statutory provisions discussed here, either a clear (or inferred) intent to discriminate must be present, or a disparate impact that cannot be explained or justified by proof that the neutral policy served important and legitimate nondiscriminatory goals. Finally, states may want to consider affirmative action -- seeking qualified women and men regardless of sex stereotyping of abilities will fully utilize the states' human resources.

Resources

Bailey, Susan, and Rebecca Smith. Policies for the Future. Washington, D.C.: Resource Center on Sex Equity Council of Chief State School Officers, May 1982.

Citron, Christiane. "Legal Bibliography on Sex Equity." Denver, Colo.: Education Commission of the States, LEC 83-5, March 1983. (Containing citations to judicial decisions and statutes discussed in this issuegram). $1.50.

Comment. "Teaching Woman Her Place: The Role of Public Education in the Development of Sex Roles," Hastings Law Journal vol. 24 (1973): 1191-1226.

Guerrier, Charles. Title IX and the Achievement of Equal Educational Opportunity: A Legal Handbook. Washington, D.C.: Resource Center on Sex Equity, Council of Chief State School Officers, September 1979.

National Advisory Council on Women's Educational Programs, Educational Equity: A Continuing Quest, 1981 Annual Report, Washington, D.C., March 1982.

Title IX: The Half Full, Half Empty Glass. Washington, D.C.: National Advisory Council on Women's Educational Programs, Fall 1981.

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